

No. 10232

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS
ANGELES,

Appellant,

vs.

UNITED STATES OF AMERICA, B. Y. TAFT, and B. Y.
TAFT and ARTHUR T. EARL, as Executors of the Estate
of Mary Eleanor Taft, Deceased,

Appellees.

APPELLANT'S REPLY BRIEF.

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The Words "All Property" Used in Section 3186 of the Revised Statutes Refer to Property Belonging to the Tax Debtor Which Is in Being at the Time the Lien Is Perfected, Whether Said Property Is Real or Personal or Tangible or Intangible; It Does Not Mean All Property Which the Tax Debtor May Acquire During His Lifetime or Within the Period of Limitation.

Counsel for the Government in their argument state that no word in the English language is more inclusive than the word "all" and urge that in the absence of clear intention on the part of Congress to limit its meaning

there is no reason to apply a definition foreign to accepted usage. Appellant contends that the interpretation of the words "all property" (belonging to the tax debtor) to mean *any and all property or rights to property whether real or personal or tangible or intangible belonging to the debtor at the time the lien is perfected* is a definition not contrary or foreign to accepted usage and is a clear expression of the intention on the part of Congress not to limit the lien to a specific type of property, but to extend the lien to all forms and types of property which the tax debtor owns at the time the lien attaches.

This construction is in accord with the thought of the Judge who decided the case of *United States v. Pac. R. R. Company*, 1 Fed. 97, referred to in appellant's opening brief, when he stated:

"It must be conceded that the words 'all property . . . belonging to such person' must be construed as referring to some time to be ascertained by the context; and it may also be conceded that we might, without doing violence to the language of the law, refer them to the time when the tax became due. . . . Another reading is authorized by the language, and is in harmony with the spirit, and that is the one I have adopted, namely, that the words in question refer to the time when the demand is made, . . ."

It was obviously to remedy the statutory law as it existed at the time of this decision and to correct the errors pointed out in the decision of this case, and to provide for the protection of third persons as to property in being at the time the lien of the Government was asserted, that the amendments of the statutes referred to by counsel for

the Government, at page 9 of the brief for the United States, were enacted.

The case of *Cannon v. Nicholas*, 80 Fed. (2d) 934, 936, referred to in respondent's brief at page 9, is clearly in line with the reasoning urged by appellant as to the meaning of the words "all property," it there being held that the words "all property" included rights under an annuity contract in which the tax debtor had an interest, at the time the lien was perfected.

Also in the case of *MacKenzie v. United States*, 109 Fed. (2d) 540, referred to in respondent's brief at the top of page 11, it was held that the words "all property" did not exclude a bank account.

The following cases cited by respondent in its brief at pages 14 and 15, to wit:

United States v. Worley (S. D. Ind.), decided March 8, 1940 (1940 C. C. H., par. 9694);

In re Rosenberg's Will, 269 N. Y. 247; and

United States v. Canfield, 29 Fed. Supp. 734 (S. D. Cal.);

are all clearly distinguishable when it is considered that the lien of the Government in each of those cases had attached to property in being at the time the lien was perfected and that the rights under consideration followed from the ownership or right to possession of said property. Thus in the *Worley* case it was held that the lien of the Government having attached to the shares of stock, the money thereafter becoming due as dividends on said stock was subject to the Government's claim and in the *Rosenberg* and *Canfield* cases the property in question, which

was an interest in trust funds, carried with it the right to receive the income from the trust. To take an analogous case let us assume that under a judgment of the State Court a judgment creditor runs an execution against shares of stock in a corporation; from the rights acquired to the stock the rights to receive the dividends would follow. Thus in the instant case, assuming that the right of Taft to a share of his mother's estate was in being at the time the lien of the Government was perfected in 1932, by its lien the Government would have had the right to receive any additional income or property of the estate which might thereafter accrue to Taft during the administration of the estate; however, in the instant case at the time the lien of the Government was perfected there was no property or right to property in existence to which the lien could attach and the only manner in which said property could be reached was not by virtue of the lien, *ipso facto*, but through the right which the Government had by virtue of its lien to subject after-acquired property by Court proceedings or distraint.

As pointed out in appellant's opening brief and conceded by the Government in its reply brief, under the holding in *Bull v. United States*, 295 U. S. 247, the Federal tax lien created under the provisions of R. S., Section 3186a, has the effect of a judgment. With the analogy between the Federal tax lien and a judgment in mind, the rights and powers of the Government by virtue of its tax lien may perhaps be better analyzed. Under state laws relating to judgments the obtaining of a judgment against an individual does not of itself give a lien upon assets of the judgment debtor. However, state laws in most cases have provided that by recording an abstract of the judgment a lien is created which will at-

tach to *real property* belonging to the judgment debtor. The only manner in which personal property may be reached, however, is by execution or garnishment, and rights to property in the hands of third parties may be reached by a creditor's suit. A judgment does not of itself create a lien upon all property belonging to the judgment debtor. Congress recognizing this fact provided for a more far-reaching lien under its "judgment." Under the common law rule it was held that a judgment would attach to after-acquired real property but personal property and chattels of the judgment debtor were reached by means of execution and there was no lien against such personal property or chattels or property in the hands of third persons by virtue of the judgment. Congress, therefore, in enacting R. S., Section 3186a, did not adopt the provisions of the common law and under the cases which appellant has cited in its opening brief the rights which the Government has under its tax lien must be determined from the language of the statute itself.

To hold that under the provisions of the Federal Statutes creating a lien, the lien attaches to all property of the tax debtor which might be after-acquired would raise many and varied problems and create a turmoil in the handling of business affairs for once the lien were perfected it would attach thereafter to all property or rights to property whether real or personal, tangible or intangible, whenever acquired, and there could be no dealing with any property at any time with any assurance that the property was not subject to a lien for the Government. For example, let us assume that an automobile dealer handling the sale of several hundred automobiles per year were subject to the Federal tax lien. Presumptively every automobile which he acquired and sold after such lien

was established would be subject to the lien and the right of the Government to take the automobile from an innocent third party and apply it against the tax which was due. Persons financing such automobiles would be subject to this prior lien and their rights imperiled. Many other instances could be cited of grave injustice that would follow from such an interpretation.

To hold in accordance with appellant's contention, however, does no harm to the Government in that it is clear that under the provisions of the law relating to the collection of taxes by distraint and by Court proceedings the Government can reach after-acquired property of a tax debtor by distraint proceedings or Court action at any time that it may choose, while the intervening interests of third persons in such after-acquired property will be protected.

The analogy between the Federal tax lien and a civil judgment is further useful in analyzing the departmental rulings and the cases cited by the Government relating to the removal and release of a tax lien. A satisfaction of a judgment entirely releases any and all rights which a judgment creditor might theretofore have had arising out of the judgment. A release of the lien created under the provisions of R. S. 3186a is without question analogous to such satisfaction of a judgment. Thus a partial release would be the same as a partial satisfaction. A removal of the lien as to specific property would be the same as a release of specific property from an execution. Further, there is no question but what title to property can be quieted as against a judgment lien upon said property without affecting any other rights of the judgment creditor which the judgment may have given rise to.

Conclusion.

It is respectfully submitted that the *Pac. R. R. Company* case is authority for the proposition that the words, "all property" must refer to some time to be ascertained by the context and that this time has been determined by Congress through the amendments which it has enacted to be the time at which the lien is recorded; that the case of *United States v. Long Island Drug Company* is authority for the proposition that the lien of the Government does not attach to after-acquired property except through distraint or Court proceedings and that intervening rights are prior to the rights acquired by the Government through such distraint or Court proceedings; and that the words "all property" as used in R. S., Section 3186a, refer to real and personal property, whether tangible or intangible as distinguished from judgment liens which attach only to real property and not to personal property, and that in the instant case it should be held that the lien of the Government sought to be asserted herein against after-acquired property did not arise until distraint proceedings were levied in 1940.

Respectfully submitted,

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